IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WA.No. 1634 of 2007

AGAINST THE JUDGEMENT IN WP(C) NO.12457/2004 DATED 27/03/2007 OF THIS COURT

APPELLANT: PETITIONER:

G. RADHAKRISHNAN NAIR,
S/O.GOPALA PILLAI, AGED 61 YEARS,
RTD. JUNIOR SUPERINTENDENT OF N.C.C.DEPARTMENT,
RESIDING AT SANAL NIVAS, PERUNNA WEST,
PANACHIKAVU, CHANGANACHERRY.

BY ADV. SRI.G.SUKUMARA MENON

RESPONDENTS: RESPONDENTS:

1. PRINCIPAL SECRETARY TO GOVERNMENT,
   DEPARTMENT OF HIGHER EDUCATION,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. DEPUTY DIRECTOR GENERAL N.C.C.,
   N.C.C. DIRECTORATE (K & L), STATE WING,
   THIRUVANANTHAPURAM-10.

BY GOVERNMENT PLEADER SRI.M.P.SREEKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1634 OF 2007

Dated this the 7th November, 2007

JUDGMENT

H.L.DATTU, C.J.

Challenging the correctness or otherwise of the orders passed by the learned single Judge in W.P.(C)No.12457 of 2004, dated 27th March, 2007, the petitioner in the Writ Petition is before us in this appeal.

2. For the sake of convenience, we will be referring to the appellant as the petitioner.

3. Petitioner retired from service on attaining the age of superannuation on 31.10.1997. While he was in service, he was kept under suspension pending enquiry by the Vigilance Officer. After completion of the enquiry proceedings by the Vigilance Officer, the petitioner was reinstated into service on 5.12.1996.

4. After he retired from service, the respondents have deducted a sum of Rs.21,760/- from the DCRG amount payable to the petitioner. Aggrieved by the orders so made for recovery of the aforesaid amount from DCRG, the petitioner was before this Court by filing O.P.No.32328 of 2000. The learned single Judge by the judgment, dated 29th August, 2003, had set aside the orders passed by the State Government (Exts.P9 and P10 in O.P.No.32328 of 2000 and Exts.P2 and P3 in the present Writ Petition, W.P.(C) No.12457 of 2004). The learned Judge had further directed the State Government to pass a fresh order in accordance with law after notice to the petitioner. After disposal of the Original Petition, the State Government has passed yet another order, dated 7th February, 2004. In that, they have given a categoric finding that it is because of the commission and omission committed by the petitioner while in service, State Government had

sustained a pecuniary loss and the same requires to be recovered from the DCRG amount payable to the petitioner. Aggrieved by the said order passed by the State Government, dated 7th February, 2004, the petitioner was once again before this Court in W.P.(C) No.12457 of 2004. The learned single Judge by the judgment, dated 27th March, 2007, has rejected the Writ Petition.

5. Before the writ court, petitioner had taken up two contentions. Firstly, that in view of the findings of the Vigilance Officer the Government was not justified in ordering recovery of certain amounts from the petitioner. Secondly, the recovery proceedings could not have been initiated after a lapse of more than three years from the date of retirement of the petitioner. Therefore, the orders passed by the State Government are not only illegal, but also invalid.

6. The learned single Judge has answered both the aforesaid contentions. In so far as the first contention is concerned, the learned single Judge in its detailed and well considered order has stated that in Ext.P1 report of the Vigilance Officer, there is a specific finding that it is because of the certain acts of commission and omission committed by the petitioner, the State Government has sustained a pecuniary loss and the petitioner cannot be prosecuted only for the reason that the original treasury bill is not traceable.

7. The Vigilance Officer has not given a clean chit to the petitioner in his report and in fact has concluded that the petitioner has misappropriated the funds of the State Government. In the report, it is further stated that prosecution proceedings cannot be initiated against the petitioner only for the reason that the original treasury bill is not available in the records.

8. In so far as the second contention canvassed by the petitioner, the

learned single Judge by relying on Note 3 Rule 3 to Part III of the Kerala Service Rules has observed that the said provision enables the State Government to quantify the liabilities of an employee either before or after retirement. In the present case, proceedings had been initiated against the petitioner earlier to his retirement from service on attaining the age of superannuation and the same is continued after his retirement from service also. Therefore, in our opinion, in view of Note 3 Rule 3 to Part III of the Kerala Service Rules, the respondents were justified in initiating proceedings for recovery of the pecuniary loss sustained by the State Government because of the acts of the petitioner.

8. Learned single Judge, in our opinion, after answering both the contentions canvassed by the petitioner, has rightly come to the conclusion that the petitioner is not entitled to any relief whatsoever.

9. Having gone through Ext.P6 order passed by the State Government and the orders passed by this Court, we are of the opinion that the learned single Judge has not committed any error in the impugned judgment, which would call for interference by this Court. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/